



Gazette opinion: Jail for \$1,500 theft should be judge's decision



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Should first-time misdemeanor offenders face the possibility of jail as a penalty for their crimes?

The Montana Senate recently said "no," with a vote of 46 to 1 in favor of Senate Bill 90, which would delete jail time as a possible penalty for these offenses:

Driving without a license or while license is revoked or suspended.

Driving without liability insurance.

Maintaining a public nuisance.

Passing a bad check for under \$1,500.

Theft of property or services valued at less than \$1,500.

Present law says that those offenses can be punished by fines as well as by up to six months in

jail.

First-time offenders rarely are jailed for those offenses. However, Yellowstone County Attorney Scott Twito argues that the threat of jail is an effective tool for getting offenders to pay their fines and restitution. Twito isn't opposed to dropping jail penalties for first-time driver's license and public nuisance offenses. He opposes elimination of the jail threat for theft and bad check writers.

Shifting burden

Between Billings Municipal Court and Justice Court, Yellowstone County handles more misdemeanor theft cases than any other Montana county. The Yellowstone County Attorney's Office frequently gives notice in Justice Court that it won't seek a jail term in a misdemeanor theft case, so the accused is aware that the consequences of pleading guilty will be restitution and a fine. No public defender is appointed in such cases, and defendants often choose to plead guilty before the justice of the peace.

The Yellowstone County Attorney's Office also has a longstanding bad check program that successfully prosecutes those who steal by writing checks.

Speaking at Thursday's Yellowstone County legislative teleconference in Billings, Twito said

prosecutors sometimes need the threat of jail time to ensure that fines will be paid. He told lawmakers SB90 would shift more work to county attorneys even as it lightened the workload for public defenders.

If a misdemeanor theft offender failed to pay a fine (or perform court-ordered community service), that person could be held in contempt of court, and potentially a judge could order that person to jail until he complied with the court order. Contempt filings and proceedings are time-consuming for the prosecutor, Twito said.

"It's shifting a burden to local governments," he said.

The impetus for SB90 is to reduce the workload for Montana's state public defender office, which really does need more attorneys and support staff. The fiscal note for the bill states: "By eliminating the possibility of jail time on the offenses included in this bill, the number of misdemeanor cases handled by the Office of the State Public Defender would decrease. A person is not entitled to a public defender if the statute does not provide for jail time."

Public defender relief

The Office of Public Defender received about 2,070 new cases last year for all the offenses that SB90 would change to no jail. (That number doesn't count cases in which such offenses were combined with other offenses.)

Although the change would reduce the public defender workload, it isn't expected to reduce the number of public defenders. The fiscal note says: "The savings in each (public defender) office would not be sufficient enough to reduce the number of attorneys, but would be used to handle further caseload growth or transfer contract cases to FTE (staff)."

In a committee hearing, SB90 sponsor Sen. Nels Swandal, R-Wilsall, a former District Court judge, said that in small-population counties with few attorneys, it can be difficult to have a public defender cover even one case. The Office of the State Public Defender and Montana ACLU supported the bill, the Montana County Attorneys Association and the Montana Sheriffs and Peace Officers Association opposed it.

We ask members of the House Judiciary Committee to take a closer look at SB90 and amend the bill to leave the misdemeanor theft and bad check penalties as they are in present law.

"We use jail as a club when they don't pay the victim back," Twito said. The Legislature shouldn't take away that club.